

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE APRIL 29, 2002

AMENDED IN SENATE APRIL 22, 2002

AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1383

Introduced by Senator Bowen

February 12, 2002

An act to add Section 17538.35 to the Business and Professions Code, relating to electronic mail.

LEGISLATIVE COUNSEL'S DIGEST

SB 1383, as amended, Bowen. Electronic mail: service providers.

Existing law regulates the sending of unsolicited electronic mail advertisements.

This bill would require an electronic mail service provider, as defined, to give each customer notice at least 30 days prior to *permanently* terminating service, unless otherwise provided by law or contract. *The bill would prohibit termination of service without cause.* The bill would authorize ~~a customer~~ *an individual plaintiff* to bring an action in any court of competent jurisdiction against an electronic mail service provider that violates these provisions for either actual damages or liquidated damages of \$50. The bill would provide that it supersedes and preempts all local agency provisions regarding notice of electronic mail termination by providers of electronic mail service. The bill would also provide that its provisions, ~~or any part of its provisions,~~ would become inoperative if *a federal law or regulation* is enacted regulating notice requirements in the event of termination of e-mail service.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538.35 is added to the Business and
2 Professions Code, to read:
3 17538.35. (a) Unless otherwise permitted by law or contract,
4 any provider of electronic mail service shall provide each
5 customer with notice at least 30 days before *permanently*
6 terminating the customer's service.
7 (b) *No contract for electronic mail service may permit*
8 *termination of service without cause.*
9 (c) For purposes of this section, "provider" shall mean the
10 entity that controls the customer's electronic mail address, and not
11 the entity making the underlying network or access available to the
12 provider or the customer.
13 ~~(e)~~
14 (d) No provider shall be liable under this section solely for a
15 failure to comply with this section in the event a customer's
16 electronic mail service is *permanently* terminated due to the action
17 or inaction of an entity making the underlying network or access
18 available to the provider or the customer.
19 ~~(d)~~
20 (e) A customer may bring an action in any court of competent
21 jurisdiction against the provider of electronic mail service for a
22 violation of subdivision (a) and may seek either actual damages,
23 or liquidated damages in the amount of fifty dollars (\$50). The
24 provisions of this section shall be in addition to any other remedies
25 or penalties available at law. *The remedy set forth in this section*
26 *is applicable only to actions brought in the name of, and on behalf*
27 *of, a single plaintiff, and shall not be applicable in multiple*
28 *plaintiff or class actions.*
29 ~~(e)~~
30 (f) This section supersedes and preempts all rules, regulations,
31 codes, statutes, or ordinances of all cities, counties, cities and
32 counties, municipalities, and other local agencies regarding notice
33 of electronic mail termination by providers of electronic mail
34 service.

1 ~~(f) This section, or any part of this section, shall become~~
2 ~~inoperative on and after the date that federal law is enacted that~~
3 ~~regulates notice requirements in the event of termination of e-mail~~
4 ~~service. As used in this subdivision, “federal law” includes, but~~
5 ~~is not limited to, federal statutes and regulations.~~

6 (g) *This section shall become inoperative on the date that a*
7 *federal law or regulation is enacted that regulates notice*
8 *requirements in the event of termination of electronic mail service.*

